



**Rule(s) Review Checklist Addendum**  
(This form must be filled out electronically.)

**This form is to be used only if the rule(s) was/were previously reviewed, and has/have not been amended/repealed subsequent to that review.**

All responses should be in **bold** format.

Document(s) Reviewed (include title): **WAC 458-20-113, Ingredients or components, chemicals used in processing new articles for sale**

Date last reviewed: **May 24, 1999**

Reviewer: **Gilbert Brewer**

Date current review completed: **April 3, 2003**

Briefly explain the subject matter of the document(s):

**Rule 113 explains the taxability of chemicals used in processing and ingredients or components used in producing new articles for sale.**

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

**1. Public requests for review:**

YES	NO	
	<b>X</b>	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

**2. Related statutes, interpretive and/or policy statements, court decisions, BTA decisions, and WTDs:** (Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.)

YES	NO	
	<b>X</b>	Are there any statutory changes subsequent to the previous review of this rule that should be incorporated?
	<b>X</b>	Are there any interpretive or policy statements not identified in the previous review of this rule that should be incorporated? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	<b>X</b>	Are there any interpretive or policy statements that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review



		Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) subsequent to the previous review of this rule that provide information that should be incorporated into this rule?
X		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) subsequent to the previous review of this rule that provide information that should be incorporated into the rule?
	X	Are there any changes to the recommendations in the previous review of this rule with respect to any of the types of documents noted above? (An Ancillary Document Review Supplement should be completed if any changes are recommended with respect to an interpretive or policy statement.)

If the answer is “yes” to any of the questions above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

- **Det. No. 98-133, 18 WTD 153 (1999) -- Substances that become an ingredient or component of a byproduct that is sold by the producer qualify for the exemption even though the byproduct was not the primary intended product.**
- **Det. No. 98-157, 19 WTD 753 (2000) -- The exemption for a chemical used in processing does not include labor charges incurred to convert an exempt chemical into a manufacturing tool. To be classified as an ingredient, the property must first be "consumed" in producing a product for sale.**

**3. Additional information:** Identify any additional issues (other than those noted above or in the previous review) that should be addressed or incorporated into the rule. Note here if you believe the rule can be rewritten and reorganized in a more clear and concise manner.

**4. Listing of documents reviewed:** The reviewer need identify only those documents that were not listed in the previous review of the rule(s). Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented:

Interpretive and/or policy statements (e.g., ETAs, PTAs, and IAGs):

Court Decisions:

Board of Tax Appeals Decisions (BTAs):



Appeals Division Decisions (WTDs):

- **Det. No. 98-133, 18 WTD 153 (1999)** -- A fruit juice producer bartered for services in return for providing another with its pomace byproduct. Rice hulls were used in the juicemaking process and entered into and formed part of the pomace byproduct. As a result, the use of the rice hulls was exempt from use tax as an ingredient or component of a finished product. Even though pomace was not the intended product, it was a byproduct that had value and was sold by the producer.
- **Det. No. 98-157, 19 WTD 753 (2000)** -- Taxpayer failed to demonstrate that articles contributed significant amounts of essential ingredients in the finished product. Taxpayer also failed to demonstrate that articles were "consumed" in the production of a product for sale. Where information that carbon cathodes experienced a chemical reaction during the manufacturing process was only recently discovered, cathodes could not satisfy the primary purpose test for a chemical used in processing. Exemption for chemicals used in processing does not include charges for labor to attach exempt chemicals to non-exempt metal rods necessary for use in the manufacturing process.
- **Det. No. 00-126, 20 WTD 84 (2001)** -- anti-sprouting spray applied to potatoes prior to storage pending processing did not qualify as a chemical used in processing. First, it was not clear that the necessary chemical reaction took place under these facts. Second, the spray was applied before any processing took place and, therefore, was not part of the manufacturing process.
- **Det. No. 01-157R, 22 WTD 49 (2003)** -- An asphalt plant used diesel fuel combustion to heat its asphalt mix. To reduce air emissions, the plant also recovered a small portion of the combusted diesel fuel in the form of fine particulates, which were used as an ingredient in subsequent asphalt batches. This use did not qualify for the ingredients exemption because the fuel did not retain its original chemical identity and was, therefore, not itself an ingredient in the final product. Moreover, it did not qualify as a chemical used in processing because the fuel did not directly contact an ingredient of the new product nor did the fuel react because of its contact with an ingredient of the new product.

Attorney General Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):



**5. Review Recommendation:**

- ☒ **Amend**
- ☐ **Repeal/Cancel** (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.)
- ☐ **Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- ☐ **Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)

**Explanation of recommendation:** Provide a brief summary of your recommendation, whether the same as or different from the original review of the document(s). If this recommendation differs from that of the previous review, explain the basis for this difference.

If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, court decisions).

**For the same reasons stated by the previous reviewer, I recommend that Rule 113 be amended. The rule should also be updated to include the issues raised by the recent WTDs discussed in (3) above. In general, the rule could be vastly improved by a more structured approach in describing the exemptions, explicitly setting out and describing each element of the separate exemptions.**

**6. Manager action:** Date: 4/28/03

☐ **AL** Reviewed and accepted recommendation

Amendment priority:

- ☐ 1  
☐ 2  
☐ 3  
☒ 4